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7
8 **UNITED STATES DISTRICT COURT**
9
DISTRICT OF NEVADA

10
11 THEODURUS STROUS,
12 DERIVATIVELY ON BEHALF OF SCIO
13 DIAMOND TECHNOLOGY CORP.,

14 Plaintiff,

15 v.

16 BERNARD MCPHEELY, KARL
17 LEAVERTON, GERALD MCGUIRE,
LEWIS SMOAK, ADAMAS ONE CORP.
and JOHN G. GRDINA,

18 Defendants,

19 and

20 SCIO DIAMOND TECHNOLOGY
21 CORP.,

22 Nominal Defendant.

23 Case No. 22-cv-00256-JCM-EJY

24
25 **STIPULATION AND ORDER TO
EXTEND DEFENDANTS' TIME TO
RESPOND TO PLAINTIFF'S
AMENDED COMPLAINT**

26 Defendants Bernard McPheely, Karl Leaverton, Gerald McGuire, and Lewis Smoak,
27 and Plaintiff Theodurus Strous, by and through their respective counsel, hereby request
under Federal Rule of Civil Procedure 6(b)(1)(A), that the Court set the time for Defendants
to answer or otherwise respond to Plaintiff's Amended Complaint.

1 On February 10, 2022, Plaintiff Theodurus Strous filed the Complaint against
 2 Defendants Bernard McPheeley, Karl Leaverton, Gerald McGuire, and Lewis Smoak.

3 The Parties spent the subsequent months discussing settlement but the parties were
 4 unable to reach a resolution.

5 On September 30, 2022, Plaintiff Theodurus Strous filed the Amended Complaint
 6 against Defendants Bernard McPheeley, Karl Leaverton, Gerald McGuire, and Lewis Smoak,
 7 and added two additional Defendants: Adamas One Corporation and John G. Grdina.

8 On October 6, 2022, Plaintiff Theodurus Strous served the Summons and Amended
 9 Complaint on Adamas One Corporation.

10 On October 25, 2022, Plaintiff Theodurus Strous served the Amended Complaint on
 11 Defendants Bernard McPheeley, Karl Leaverton, Gerald McGuire, and Lewis Smoak.

12 Plaintiff has not yet served John G. Grdina.

13 No defendant has filed an answer or otherwise responded to Plaintiff's Amended
 14 Complaint.

15 Plaintiff and Defendants Bernard McPheeley, Karl Leaverton, Gerald McGuire, and
 16 Lewis Smoak have agreed to extend the time for Defendants to answer or otherwise respond
 17 to Plaintiff's Amended Complaint as follows:

18 a. Defendants shall file an answer or otherwise respond to

19 Plaintiff's Amended Complaint by **Thursday, January 5,**
 20 **2023.**

21 b. Plaintiff shall file its opposition to any motion(s) to dismiss
 22 filed by Defendants by **Thursday, March 2, 2023.**

23 c. Defendants shall file any replies in support of motion(s) to
 24 dismiss by **Thursday, April 6, 2023.**

25 Good cause exists for the proposed extension, as set forth below:

26 1. Plaintiff has agreed, as a professional courtesy, to allow Defendants' counsel
 27 additional time to review the case with Defendants, investigate the allegations, and prepare
 28 a response to the Amended Complaint.

1 2. Defendants' counsel has limited availability in November and December due
 2 to the holidays and parental leave.

3 3. The claims in the 134-paragraph, 52-page Amended Complaint are complex
 4 and require time to conduct a thorough investigation into the facts and the law in order to
 5 prepare an initial pleading. And Plaintiff will most likely have to respond to two or three
 6 separate motions to dismiss.

7 4. The Parties do not believe that this extension, if granted, will unreasonably
 8 delay this case and that the extension will serve to preserve the court's and the parties'
 9 resources and advance judicial economy under the circumstances present in this litigation.

10 5. Neither Plaintiff nor Defendants will be prejudiced by the stipulation.

11 **Therefore**, the Parties jointly request that the Court extend Defendants' period of
 12 time to answer or otherwise respond as follows:

13 1. The time within which Defendants may answer, move, or
 14 otherwise respond to the Amended Complaint is hereby
 15 extended through and including **Thursday, January 5,**
 16 **2023.**

17 2. Plaintiff shall file its opposition to any motion(s) to dismiss
 18 filed by Defendants by **Thursday, March 2, 2023.**

19 3. Defendants shall file any replies in support of motion(s) to
 20 dismiss by **Thursday, April 6, 2023.**

21 4. All rights are reserved with regards to any further requests
 22 for extensions of deadlines. This schedule can be modified
 23 by further written agreement of the parties or order of the
 24 court.

25 5. This Court shall retain jurisdiction with respect to all matters
 26 arising from or related to the implementation of this Order.

27 Defendants counsel Amy Conners, John Sullivan, and Brian Linnerooth are in the
 28 process of seeking pro hac vice admission and will comply with LR IA 11-2 within 14 days.

1 Dated this 15th day of November, 2022.

2 **SPENCER FANE LLP**

3 /s/ Mary E. Bacon

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13 *Attorneys for Defendants Bernard
McPheeley, Karl Leaverton, Gerald
McGuire and Lewis Smoak*

Dated this 15th day of November, 2022.

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Attorneys for Plaintiff

ORDER

Per the parties' stipulation, **IT IS SO ORDERED.**

1. The time within which Defendants may answer, move, or otherwise respond to the Amended Complaint is hereby extended through and including **Thursday, January 5, 2023**.
2. Plaintiff shall file its opposition to any motion(s) to dismiss filed by Defendants by **Thursday, March 2, 2023**.
3. Defendants shall file any replies in support of motion(s) to dismiss by **Thursday, April 6, 2023**.
4. All rights are reserved with regards to any further requests for extensions of deadlines. This schedule can be modified by further written agreement of the parties or order of the court.
5. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Elayne J. Zouchah
U.S. MAGISTRATE JUDGE

Date: November 15, 2022